REMARKS

Claims 1 - 11 and 14 – 22 are pending in the application. Claims 1 - 11 and 14 – 22 have been rejected.

Claims 1 - 11, 14 - 16, 21 and 22 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. More specifically, the Examiner set forth:

> Regarding independent **Claims 1, 9, 14 and 21**, the claims cite steps for providing an assessment of a supplier. The claims provide for a tangible result and a result that has utility, however the steps do not provide for a concrete result.
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> These steps would provide an output (i.e. a supplier rating) that is substantially different, depending on the individual that is utilizing the claim steps.
>
> Thus, one individual using the claimed invention could realize a substantially different outcome than another individual, even assuming that they had the same experience with a supplier. Because the claims may be used as such to provide different outcomes, the invention as claimed does not provide for a result that is substantially repeatable, and therefore does not provide a concrete result.
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> Because **Claims 1, 9, 14 and 21** do not provide for a concrete result, these claims are rejected under 35 USC 101. **Claims 2-8, 10, 11 and 22** depend on **Claims 1, 9, 14 and 21**, they are also not statutory under 35 USC 101 at least for the reasons given above (Office Action, Pages 4-5).

However, the examiner has misstated the requirements for a claim to be statutory. It is respectfully submitted that the Examiner is misapplying the statutory requirement that the claims "produce a result that is substantially repeatable." (Final Office Action dated July 10, 2006, page 3.) When discussing the concrete result requirement patentable subject matter for computer related inventions, the MPEP sets forth:

> Another consideration is whether the invention produces a "concrete" result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeatable or the process must substantially produce the same result again. *In re Swartz*, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000) (where asserted result produced by the claimed invention is "irreproducible" claim should be rejected under section 101). The opposite of "concrete" is unrepeatable or unpredictable. Resolving this question is dependent on the level of skill in the art. For example, if the claimed invention is for a process which requires a particular skill, to determine whether that process is substantially repeatable will necessarily require a determination of the level of skill of the ordinary artisan in that field. An appropriate rejection under 35 U.S.C. 101 should be accompanied by a lack of

enablement rejection under 35 U.S.C. 112, paragraph 1, where the invention cannot operate as intended without undue experimentation. *See infra.* (MPEP 2106(IV)(2)(c).

In the present application, the claims as a whole accomplish the concrete result of evaluating a supplier. Just because different individuals might provide different evaluations which would result in a different indicia of the supplier's performance, this indicia is in fact "concrete" in that the same input by the same individual result in the same output.

Accordingly, it is respectfully submitted that claims 1 - 11, 14 - 16, 21 and 22 are statutory.

Claims 1 - 3, 9, 12 - 14 and 21 stand rejected over Powers, U.S. Publication No. 2002/0040309 (Powers) in view of PRTM's Performance Management Group benchmarking service described in "Supply Chain Council presentation of May 12, 1999" (Reference C).

Claims 4 -8, 10, 11 and 22 stand rejected over Powers in view of PRTM's Performance Management Group benchmarking service described in Supply Chain Council's Webpage Newsletter of November 1998 describing PRTM's Online Supply-Chain Benchmarking, Pages 4 – 5" (Reference A), "PRTM Webarchive.org webpage dated December 5, 1998" (Reference B), and "Supply Chain Council presentation of May 12, 1999" (Reference C), PRTM press release, "High-Tech Management Consultants PRTM Launch Online Benchmarking Company," March 1999, pp. 1-2 (Reference D), and PRTM press release, "University of Michigan/OSAT and The Performance Measurement Group Launch a New Benchmarking Initiative for the Automotive Industry," January 21, 2000 (Reference E) (all generally referred to as the PRTM documents or PRTM).

Claims 15 - 20 stand rejected over the PRTM documents.

The Examiner has set forth that Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguished them from the references. Applicants respectfully disagree with this position of the Examiner. However, in an effort to expedite prosecution, Applicants will attempt to provide additional specificity regarding how the claims patentably distinguish over the references.

The present invention generally relates to evaluating a customer's suppliers. The invention teaches a method for electronically compiling analysis of a supplier's performance from team members, the supplier and a team leader. The invention discloses several measures of efficiency of each supplier and further discloses reports to compare suppliers to other suppliers of the same, or similar, components. Additional reports can be generated to show historical trend of the supplier's performance. An embodiment of the invention allows suppliers to review their final scorecards and compare their scorecards to other suppliers of the same, or similar, components.

More specifically, the present invention, as set forth by independent claim 1, relates to a method for a customer to evaluate performance of a supplier where the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider. The method includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier into a customer website where the first evaluation is based upon at least one experience of the team member with the supplier, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer into a customer website where the second evaluation is based upon at least one experience of the team member with the supplier, receiving a third evaluation of the supplier submitted electronically by the supplier into a customer website where the supplier is part of an organization that is external to the customer, and generating an indicia of a supplier's performance based on the first, second and third evaluation where the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 9, relates to a system for evaluating a supplier where the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider and which includes a computer system. The computer system includes a computer program product encoded in computer readable media and is operable to receive a first evaluation of a supplier based upon at least one experience of the team member with the supplier submitted by a team member of a customer of the supplier, receive a second evaluation of the supplier based upon at least one experience of the team leader with the supplier being submitted by a team leader of the

customer, receive a third evaluation of the supplier submitted by the supplier who is part of an organization that is external to the customer, and generating an indicia of the supplier's performance based on the first, second and third evaluation. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 14, relates to a computer program product encoded in computer readable media. The computer program product includes instructions, executable on a computer system, configured to receive a first evaluation based upon at least one experience of the team leader with the supplier of a supplier submitted electronically by a team member of a customer of the supplier, receive a second evaluation based upon at least one experience of the team leader with the supplier of a supplier submitted electronically by a team leader of the customer, receive a third evaluation of the supplier who is part of an organization that is external to the customer submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 15, relates to a system for evaluating a supplier who is part of an organization that is external to a customer which includes a computer system. The computer system includes a data storage device. The data storage device stores data for a supplier performance among suppliers supplying a class of components. The data includes data representing quality of components supplied by each supplier, data representing cost of components supplied by each supplier, data representing availability of the components from each supplier, data representing service performance of each supplier, and data representing a top performing vendor among the suppliers supplying the class of components. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 17, relates to a method of evaluating the performance of a supplier who is part of an organization that is external to a customer. The performance of the supplier is determined from at least one of a group. The

method includes determining a best supplier in the class of suppliers, where the class of suppliers are those suppliers supplying a component to a manufacturer and where the determination is performed by a computer system. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 21, relates to a method of evaluating the performance of a supplier who is part of an organization that is external to a customer. The performance of the supplier is determined from at least one of a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider. The method includes receiving a first evaluation of the supplier based upon at least one experience of the team member with the supplier submitted electronically by a team member of a customer of the supplier, receiving a second evaluation of the supplier based upon at least one experience of the team leader with the supplier submitted electronically by a team leader of the customer, and generating an indicia of a supplier's performance based on the first and second evaluation. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

Powers generally relates to evaluation tools and discloses a performance evaluation system which uses productivity and quality data to evaluate the performance of an individual, group, process or other suitable type of item or operation. (See, e.g., Powers, ¶21.) The system is deployed on a three tiered architecture having a client space, a server application space and a database space. (See, e.g., Powers, ¶22.) Powers discloses a plurality of types of users that provide information to the evaluation system, these users include a sales manager, a product manager and a product agent. (See, e.g., Powers ¶¶ 38, 40 and 44 and Powers Figures 2 and 3.) However, Powers does not disclose as one of these types of users the actual supplier or vendor being evaluated.

Reference A of the PRTM documents discloses that the performance measurement group (PMG), a subsidiary of Pittiglio Rabin Todd & McGrath (the PRTM organization), was selected to undertake a new benchmarking study. The benchmarking study is intended to provide an

online subscription series to map companies' supply-chain data to a predefined council model. The subscription series is intended to offer cross industry reports that analyze key drivers of supply-chain performance, key metrics for measuring overall supply-chain performance and drilling down into specific functional areas, comparative performance data from companies of a variety of industries, best practices of top performers and online historical supply-chain benchmarking data for trending purposes (Reference A, pages 4 and 5.) Reference B of the PRTM documents sets forth an apparent marketing document of the PRTM organization which discusses benchmarking studies that PRTM conducts for its clients. Reference C of the PRTM documents discloses a slide presentation which presents a representative analysis of a supply chain scorecard. The metrics include data on delivery performance and quality, flexibility and responsiveness, cost and assets. (Reference C, page 22.)

When discussing the various evaluations that are specifically claimed, the Examiner cites to a plurality of portions of Powers and sets forth:

> Paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier.
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> Paragraph 44, line 2-6, 11, Users use the performance evaluation system to enter evaluations into the system (Office Action, Page 6).

as well as:

> Figure 2 #104, product manager is a user of the system. The rest of Figure 2 shows a plurality of users who would enter evaluations into the system (Office Action, Page 7).
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> Paragraph 44 line 2-6, 11, product B manager (user 35) can use the performance evaluation system to enter evaluations. The users are the people in the system that perform the evaluations (Office Action, Page 7).

as well as:

> Paragraph 44 line 2-6, 9, service manager (user 10) can use the performance evaluation system to enter evaluations. The service manager is head of a group that supplies service to the rest of the organization.
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> Figure 2, the service organization contains three members, a service manager (user 10), and service agents (users 11 and 12). A service manager evaluating the service organization would include providing at least a third evaluation.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations (Office Action, Page 8).

Some of the portion of Powers to which the Examiner refers set forth:

the performance evaluation system 10 uses productivity and quality data to evaluate the performance of an individual, *group*, process or other suitable type of item or operation. (Powers, ¶ 0021, lines 3 – 5, emphasis added.)

as well as:

The users are people in the performance evaluation system 10 that perform the evaluations and that carry out the various tasks associated with the evaluation process such as defining all of the information needed to perform the evaluations. The user IDs may be any suitable identifier operable to uniquely identify the users. For the call center 100 of FIG. 2, the users are the system administrator (user 1), the service manager (user 10), the technical manager (user 20), the sales manager (user 30), the product A manager (user 31), and the product B manager (user 35). (Powers ¶ 00044, lines 2 – 11.)

Additionally, the Examiner sets forth:

Figure 3 #124, para 39, Although Powers teaches that an internal service provider (i.e. supplier) can be evaluated by the invention, the description of the type of supplier as cited does not add patentable weight to the claim and is considered by the examiner to be nonfunctional descriptive material. The receiving of 3 evaluation reports to generate an indicia, as cited, is not structurally changed by specifying who is providing the reports (Office Action, Page 9).

However, it is respectfully submitted that Powers does not disclose or suggest a method for a customer to evaluate performance of a supplier, much less the specific elements claimed when performing the method. These deficiencies of Powers are not cured by the PRTM documents.

More specifically, Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method for *a customer to evaluate performance of a supplier* where *the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a method which includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier into a customer website *where the first evaluation is based upon at least one experience of the team member with the supplier*, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer into a customer website *where*

the second evaluation is based upon at least one experience of the team member with the supplier, receiving a third evaluation of the supplier submitted electronically by the supplier into a customer website where the supplier is part of an organization that is external to the customer, and generating an indicia of a supplier's performance based on the first, second and third evaluation where *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 1. Accordingly, claim 1 is allowable over Powers and the PRTM documents. Claims 2 - 8 depend from claim 1 and are allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a system for evaluating a supplier where *the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a system which includes a computer program product encoded in computer readable media and is operable to receive a first evaluation of a supplier submitted by a team member of a customer of the supplier *based upon at least one experience of the team member with the supplier*, receive a second evaluation of the supplier submitted by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, receive a third evaluation of the supplier submitted by the supplier who is part of an organization that is external to the customer, and generating an indicia of the supplier's performance based on the first, second and third evaluation and *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 9. Accordingly, claim 9 is allowable over Powers and the PRTM documents. Claims 10 and 11 depend from claim 9 and are allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a computer program product encoded in computer readable media where the computer program product includes instructions, executable on a computer system, configured to receive a first evaluation submitted electronically by a team member of a customer of the supplier *based upon at least one experience of the team leader with the supplier of a supplier*, receive a second evaluation of a supplier submitted electronically by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, receive a third evaluation of the

supplier who is part of an organization that is external to the customer submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations *and the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 14. Accordingly, claim 14 is allowable over Powers and the PRTM documents.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a system for evaluating a supplier which includes a computer system which includes instructions, executable on a computer system, configured to receive a first evaluation submitted electronically by a team member of a customer of the supplier *based upon at least one experience of the team leader with the supplier of a supplier*, receive a second evaluation of a supplier submitted electronically by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, receive a third evaluation of the supplier who is part of an organization that is external to the customer submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations and the *supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 15. Accordingly, claim 15 is allowable over Powers and the PRTM documents. Claim 16 depends from claim 15 and is allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method of evaluating the performance of a supplier who is part of an organization that is external to a customer where the performance of the supplier is determined from at least one of a group and the method includes determining a best supplier in the class of suppliers, where *the class of suppliers are those suppliers supplying a component to a manufacturer where the determining is performed by a computer system the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 17. Accordingly, claim 17 is allowable over Powers and the PRTM documents. Claims 18 - 20 depend from claim 17 and are allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method of evaluating the performance of a supplier who is part of an organization that is external to a customer where the performance of the supplier is determined from *at least one of a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a method which includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier *based upon at least one experience of the team member with the supplier*, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, and generating an indicia of a supplier's performance based on the first and second evaluation, all as required by claim 21. Accordingly, claim 21 is allowable over Powers and the PRTM documents. Claim 22 depends from claim 21 and is allowable for at least this reason.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being electronically submitted to the COMMISSIONER FOR PATENTS via EFS on April 19, 2007.

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Respectfully submitted,

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